

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-502
)	
Missouri RSA No.2 Partnership)	NAL/Acct. No. 200232560019
d.b.a. Alltel)	
Owner of Antenna Structure #1004380 near)	FRN 0001-8373-27
Ridgeway, Missouri)	
Little Rock, Arkansas)	

FORFEITURE ORDER

Adopted: June 25, 2003

Released: June 27, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Missouri RSA No. 2 Partnership d.b.a. Alltel (“Alltel”) for willful violation of Section 17.50 of the Commission’s Rules (“Rules”).¹ The noted violation involves Alltel’s failure to clean and repaint its antenna structure to maintain good visibility.

2. On July 24, 2002, the Commission’s Kansas City, Kansas Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of ten thousand dollars (\$10,000) to Alltel for the noted violation.²

II. BACKGROUND

3. On June 24, 2002, an agent from the Kansas City Office inspected the antenna structure bearing FCC registration number 1004380 and located near Ridgeway, Missouri. At the time of the inspection, the paint on the structure was severely faded, thereby reducing visibility of the structure. Antenna structure registration number 1004380 is registered to, and owned by Alltel, and is required to be painted with alternating aviation orange and white bands. On July 24, 2002, the Kansas City Office issued an *NAL* in the amount of \$10,000 to Alltel for failure to clean and repaint its antenna structure to maintain good visibility.

4. In its response to the *NAL*, Alltel requests cancellation or reduction of the proposed forfeiture. Alltel argues that the instant *NAL* is the first issued against it, and that it is establishing a compliance procedure that includes periodic inspection and maintenance of its antenna towers to ensure compliance with Part 17 standards. In addition, Alltel contends that the same tower cited in the *NAL* had been the subject of a *Notice of Violation* (“*NOV*”) issued by the Kansas City Office, dated September 17, 2001. The *NOV* notes that the tower had coax outside the tower legs covering the paint on the tower

¹ 47 C.F.R. § 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560019 (Enf. Bur., Kansas City Office, released July 24, 2002).

itself. Alltel indicates that it immediately contracted with a company to have the tower and the coax painted by October 3, 2001, and notified the Kansas City Office of its actions. Alltel claims that subsequently, on June 27, 2002, an FCC agent called the licensee and indicated that issuance of another *NOV* was possible because the paint had faded and a tower sign was missing.³ Alltel states that it immediately contracted with a different company to have the tower painted again to ensure proper visibility. Alltel reports that the tower painting has been completed and that it is now in full compliance with the Commission's rules. Alltel argues that since a *NOV* was not issued in this case, it did not have an opportunity to correct the situation. According to Alltel, in light of its history of overall compliance and swift actions to correct the violations, the issuance of a *NOV* instead of a *NAL* would have been appropriate. There should be no linkage between the previous *NOV* and the instant situation, asserts Alltel, because it took swift actions to correct the violations in both instances. Alltel contends that the previous contractor that it hired after receipt of the *NOV* in 2001 used substandard materials and "victimized" Alltel.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Alltel's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

6. Rescission or reduction of the proposed forfeiture is not warranted in this case. We decline to rescind or reduce the forfeiture on the basis that no *NOV* was issued, and therefore the licensee did not have an opportunity to correct the violation. Nothing in the Communications Act or the Commission's Rules entitles a licensee to an opportunity to correct a violation prior to the issuance of a *NAL*. Licensees cannot expect simply to sit back and await Commission findings of violations before taking appropriate steps to ensure compliance with Commission rules. Alltel's argument that its contractor used substandard quality paint does not provide a basis for rescission or mitigation of the proposed forfeiture; it is responsible for the acts of its agents.⁷ Furthermore, Alltel's remedial efforts to correct the violation are not a mitigating factor.⁸ In this regard, the fact that Alltel is now establishing a program to inspect its towers to ensure compliance with Part 17 is hardly a mitigating factor; if anything its lack of such a program until now is an exacerbating factor. Finally, we are not persuaded that Alltel's history of overall compliance justifies a reduction in the forfeiture in light of the *NOV* issued on September 17, 2001 for a very similar violation and several other *NOV*s issued to Alltel regarding Part 17

³ We note that the FCC agent did not affirmatively state that a *NOV* would be issued.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991) (stating that the Commission has long held that licensees are responsible for the negligent acts or omissions of their employees and that this responsibility is not lessened when contractors are used); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972) (stating that the negligent acts or omissions of an employee or independent contractor do not relieve a licensee of its responsibility to comply with the Commission's rules).

⁸ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

violations.⁹

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Missouri RSA No. 2 Partnership d.b.a. Alltel IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for failure to clean and repaint its antenna structure to maintain good visibility in willful violation of Section 17.50 of the Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232560019 and FRN 0001-8373-27. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

9. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Missouri RSA No. 2 Partnership d.b.a. Alltel, One Allied Drive, B2F02-A, Little Rock, AR 72202, and to its counsel Glenn S. Rabin, Esq., Alltel Corporation, 601 Pennsylvania Avenue, NW, Suite 720, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ See *Arnold Broadcasting Company*, 16 FCC Rcd 267, 269 (Enf. Bur. 2001), *application for review granted in part for other reasons and denied in part*, 16 FCC Rcd 13600 (2001); and *Crown Communication, Inc.*, 15 FCC Rcd 21937 (Enf. Bur. 2000).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.